

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No.

H. S. GRAY, ET AL., PETITIONERS,
VS.

MYRTA BLIGHT, ADMINISTRATOR OF THE
ESTATE OF H. E. BLIGHT, DECEASED,
RESPONDENT.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

I.

OPINION OF THE COURT BELOW.

The Opinion of the Circuit Court of Appeals is set out briefly on page 4 of Petitioners' Application for Writ of Certiorari, and is shown in full at pages 25 to 32 of the record herein.

The official report of same may be found in 112 F. (2d) 696.

II.

JURISDICTION.

1. The date of the Opinion of the Circuit Court of Appeals, the review of which is here sought, is June 10, 1940, and Petition for Rehearing, being duly filed on

July 5, 1940, (R. 33-41) was overruled by the Circuit Court of Appeals, without written Opinion, on July 12, 1940 (R. 43).

2. Statutory provision sustaining the jurisdiction of this Court is Title 28, Section 347a, U. S. C. A. (Judicial Code 240);

3. Jurisdiction of this Court is also based upon a portion of Rule 38, Para. 5 of the Rules of the Supreme Court (effective February 27, 1939) reading:

“(b) Where a circuit court of appeals has -- decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court”;

4. The precise question presented by this Cause has never been before the Honorable Supreme Court, but it is believed that the Opinion of the Circuit Court of Appeals is not harmonious with prior decisions of the Supreme Court and that the following cases sustain the jurisdiction of this Honorable Court:

- (a) *Dennick v. Central Ry. Co.*, 103 U. S. 11, 26 L. Ed. 439.
- (b) *Northern Pacific Ry. Co. v. Babcock*, 154 U. S. 190, 38 L. Ed. 958.
- (c) *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 52 Sup. Ct. 571.
- (d) *Ormsby v. Chase*, 290 U. S. 387, 54 Sup. Ct. 211.

III.

STATEMENT OF THE CASE.

A Statement of this Case has heretofore been made in the preceding Petition, under paragraph one (pages

2 to 6), which is hereby adopted and made a part of this Brief.

IV.

SPECIFICATIONS OF ERROR.

1. The Honorable Circuit Court of Appeals erred in failing to hold that a cause of action for personal injuries is property within the meaning of the "due process" clause, ⁽¹⁾ and "equal protection" clause, ⁽²⁾ of the Constitution of the United States of America; and an adjunct of a public act of the State of Nevada entitled to "full faith and credit" in the State of Colorado. ⁽³⁾

2. The Honorable Circuit Court of Appeals erred in failing to hold that the State of Colorado by express self-executing Constitutional Mandate, ⁽⁴⁾ created and ordained courts of general jurisdiction, wherein it guaranteed a remedy for every injury to *person*, property or character - - - so long as such cause of action for same survives under the law of the *lex loci*.

3. The Circuit Court of Appeals erred in holding that the State of Colorado does not permit the prosecution of causes of action for personal injuries against the personal representative of a deceased tort feasor, where such cause of action arose and expressly survived under the law of a sister State.

4. The Circuit Court of Appeals erred in holding that the enforcement of a cause of action for personal injuries against the personal representative, or estate of a deceased tort feasor, which arose and expressly survived under the law of a sister State, is repugnant to the public policy of the State of Colorado.

5. The Circuit Court of Appeals erred in holding that Section 247, Chapter 176, of the 1935 Colorado

1. Art. XIV, Amendment to Const. of U. S.—Appendix A, page 29.
2. Art. XIV, Amendment to Const. of U. S.—Appendix A, page 29.
3. Art. IV, Sec. 1, Const. of U. S.—Appendix A, page 29.
4. Art. 2, Sec. 6, Const. of Colo., *supra*, pg. 5 (b) 1.

Statutes Annotated, ⁽¹⁾ declares the public policy of Colorado to permit the prosecution of certain causes of action against the Executor, Administrator or Conservator of the wrongdoer, after his death, but excludes therefrom causes of action for injuries to the person.

V.

ARGUMENT.

In that the Circuit Court of Appeals has affirmed in part the action of the United States Federal District Court of Colorado in dismissing Petitioners' causes of action for failure to state a claim enforceable in the State of Colorado, the allegations pertaining to such causes of action set forth in their Petition must be taken as true on this appeal. (*State of Arizona v. State of Colorado*, 283 U. S. 423; 51 Sup. Ct. 522.)

Petitioners therefore submit authorities and argument in support of the errors assigned, as follows:

Under Detailed Specification of Error No. 1.

It is undisputed that under the Law of the State of Nevada, the State within whose jurisdiction the injuries here complained of were inflicted, a cause of action for personal injuries survives to the person wronged, even upon the death of the wrongdoer; ⁽²⁾ and

It is equally well settled that whether a cause of action survives to or against personal representatives of a deceased party is a question of right and not of procedure.

Gerling v. B. & O. R. R. Co., 151 U. S. 673, 14 Sup. Ct. 533, 38 L. Ed. 311.

Plimpton v. Mattakeunk Cabin Colony, 6 Fed. Supp. 72.

(1) *Supra*, pg. 6, par. (b) 4.

(2) Nevada Compiled Laws, 1929, 1938 Pocket Part of Vol. 1, Sec. 240-01, *supra*, pg. 5.

Further, this right of action for personal injuries is property.

G. C. & S. F. R. R. Co. v. Cities Service Co., 273 Fed. 946.

Martinez v. Fox Valley Bus Lines, 17 Fed. Supp. 576.

Hence, bearing in mind the well-settled rule that the jurisdiction wherein the tort is *committed* governs the *substantive* right of the Petitioners (*Ormsby v. Chase*, 290 U. S. 387; 54 Sup. Ct. 211; 78 L. Ed. 378); it is submitted that Petitioners were vested with a substantive property right enforceable in the District Court of the United States for the District of Colorado, and that the Trial Court and the Honorable Circuit Court of Appeals erred in failing to so hold.

Under Detailed Specifications of Error 2, 3, 4 and 5.

In that the Questions presented by these Assignments are so closely related, Petitioners ask that they be permitted to discuss and argue same under one topical heading.

As a preface to the following Argument, Petitioners adopt the argument and collation of authorities under Assignment of Error No. 1, and submit that they are here seeking to enforce a right legitimately acquired and still belonging to them and which, under the full faith and credit clause of the Federal Constitution (Article 4, Section 1) which declares:

“Full faith and credit shall be given in each state to the public acts - - - of every other state” “ - - ;

should be entertained by the Federal District Court sitting in the District of Colorado, unless,

(1) The forum (Colorado) fails to provide a court with jurisdiction of the controversy;

1. Art. IV, Sec. 1, Const. of U. S.—Appendix A, pg. 29.

(2) The forum (Colorado) fails to provide the procedure appropriate for its determination;

(3) The enforcement of the rights conferred under the laws of the State of Nevada would be obnoxious to the public policy of the forum (Colorado)

(Bradford Electric Light Co. v. Clapper, 286 U. S. 145) 52 Sup. Ct. 571; 76 L. Ed. 1026, 82 A. L. R. 696.

POINT "A"

The State of Colorado does provide a Court with jurisdiction of this controversy and appropriate procedure necessary for its determination.

In the year 1876 the people of Colorado adopted their present Constitution (Compiled Laws of Colorado, 1921, pages 34 to 84) which had incorporated therein as a part of the Bill of Rights of that State (Article 2, Section 6) the following Constitutional Mandate:

"The courts of justice shall be open to every person and a speedy remedy afforded for every injury to person, property or character; and that right and justice should be administered without sale, denial or delay."

As a part of the same Constitution, Article 6, Section 1 and Sections 11 to 19, the Courts in which such remedies should be heard were created. ⁽¹⁾

Hence, under the express Constitutional provisions of the State of Colorado, a complete judicature was set up which needed no ancillary legislative enactments to set the same in operation.

As stated in 16 C. J. S., pages 98 to 100, Section 48:

"A provision (of a constitution) is self-executing when it can be given effect without the aid of

1. *Supra, pg. 6 par. (b) 2 and 3, and see Appendix B, pg. 29.*

legislation and there is nothing to indicate that legislation is contemplated in order to make it operative; as stated in *Corpus Juris*, constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed. That a right granted by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent the provision in question from being self-executing; nor does the self-executing character of a constitutional provision necessarily preclude legislation for the better protection of the right secured, nor legislation in furtherance of the purposes, or of the enforcement of the provision. A self-executing provision does not, however, require any legislation to render it operative, and the legislature may neither abridge, extend, nor otherwise alter such a provision. Only such legislation is permissible as is in furtherance of the purpose, or as will facilitate the enforcement of such provision, and legislation which will impair, limit, or destroy rights granted by the provision is not permissible."

That the above quoted provision of the Colorado Constitution, (Article 2, Section 6,) is self-executing is not open to question; indeed, the Supreme Court of Nebraska in a recent case, decided in 1935, has held a Constitutional provision almost identical in language with that of Colorado, to be self-executing and in a situation most similar to the one presented by the case at *Bar. Wilfong v. Omaha & Counsel Bluff R. R. Co.*, 129 Neb. 600, 262 N. W. 537, at page 541.

As is manifest then, the Constitution of Colorado has, by self-executing Constitutional Mandate, declared and ordered that the Courts of Colorado shall be open to every person in order that a speedy remedy shall be afforded him for every injury to his person, property or character, and has provided a means, the very courts, by which may be obtained a *remedy* in redress of these wrongs;

A "remedy" as used in law, has been almost unanimously defined as the "legal means to recover a right, or to prevent, or obtain redress for a wrong". (Webster's New International Dictionary). "The means employed to enforce a right or redress for an injury." (Bouvier's Law Dictionary, Unabridged, Vol. 2, Third Edition). Hence, the Bill of Rights of the State of Colorado expressly states and directs that the courts (as created by that Constitution) shall be open to every person and the legal means given him to afford redress for every injury to his person, property or character, and it naturally follows, as night the day, that a Court exists in Colorado which has jurisdiction to redress and enforce Petitioners' rights; a Court wherein they are afforded their remedy, for, as is stated in 12 C. J. 700:

"The fundamental purpose in construing a Constitutional provision is to ascertain and give effect to the intent of the framers and of the people who adopted it. The Court, therefore, should constantly keep in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied;"

and, as stated in 12 C. J., Sec. 106, page 730:

"- - - A Constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficacy and operation on legislative will."

The Honorable Circuit Court of Appeals places great emphasis on the survival statute of the State of Colorado, being Section 247, Chapter 176 of 1935, Colorado Statutes Annotated, which in effect states that all actions in law, save and except trespass for injuries done to the person (and certain others), shall survive to and against executors, administrators and conservators, and seemingly announces that under the wording of this statute, *or rather by reason of the State's failure to provide for the survival of this cause of action*, the same may not be maintained against the personal representative of the

estate of the deceased tort feasor; and, as supporting this conclusion, cites the case of *Letson v. Brown*, 11 Colo. App. 11, 52 Pac. 287, which does nothing more than decide that the cause of action does not, under Colorado Law, survive the death of either party; i. e.: if the tort is inflicted in Colorado.

In the *Letson* case, *supra*, the precise point before the Court for decision was whether or not the cause of action itself survived the death of the wrongdoer and Petitioners admit that in so far as the precise point is adjudicated by the Colorado Court, the Federal Courts are bound by the Rules and Decisions Act (28 U. S. C. A., Section 725) to follow same.

However, in the case at Bar, no question exists but that the cause of action, or right of action, now sought to be enforced by the Petitioners, survived under the Law of the *lex loci*, that is, under the Law of the State of Nevada, and as a consequence, Petitioners submit that the case of *Letson v. Brown*, *supra*, together with the statute construed therein, cannot be and is in no way material to the present litigation.

Apparently, the Honorable Circuit Court of Appeals is confused by the applicability of Section 390, subsection (b) of the Restatement of Conflict of Laws, that:

“If a claim for damages for injury survives the death of the injured person or the wrongdoer, as the case may be, by the law of the place of the wrong, recovery may be had upon it by or against the representative of the decedent, provided the law of the forum permits the representative of the decedent to sue or to be sued on such claim. Without such power created by the law of the state of suit, no recovery can be had;”

and assumes that because no *statute* of Colorado expressly provided for the maintenance of this action, no court has ever been created to hear this cause.

Apparently, as sustaining this contention, the Circuit Court of Appeals asserts that the Common Law of England, under which such a cause of action as this does not survive, was adopted by the State of Colorado by statute, as follows:

“The Common Law of England, so far as the same is applicable and of a general nature and all acts and statutes of the British Parliament made in aid of or to supply the defense of the Common Law prior to the Fourth Year of James 1 - - - and which are of a general nature and not local to that kingdom, shall be the rule of decision and shall be considered as of full force until repealed by legislative authority.”⁽¹⁾

That the State of Colorado adopted the Common Law of England “so far as applicable and of a general nature” the Petitioners readily admit, but they insist that such adoption, whether before the Enactment of the present Constitution or afterwards, cannot in any way operate to limit, abridge, or destroy the self-executing and mandatory provision of the Constitution of Colorado that the courts of that State, as created by the very Constitution itself, shall be open to every person and a speedy remedy afforded every person for every injury to his person, property or character; as stated in 16 C. J. S., page 96, Section 44:

“. . . the Common Law is repealed by the Constitution to the extent that it is inconsistent therewith.”

It is apparent then, that this statutory enactment caused the Common Law to become operative in the State of Colorado, but only to the extent that it was consistent with and in accord with the Constitutional mandate of the people of Colorado. Any phase thereof which operated in derogation of the Constitutional right of every person to seek his remedy in the courts of Colorado, for his injuries, whether to his person or

otherwise, of necessity did not become a part of the Rule of Decision in the State of Colorado.

This Honorable Court is well aware of the origin of the Common Law maxim "actio personalis moritur cum persona" and knows that the same grew out of an archaic concept of punishment which, long prior to the adoption of the Constitution by the people of Colorado was utterly abrogated and the enlightened and correct theory of recompense was adopted in its stead, and;

As has been previously stated, the people of Colorado, long after the substitution of the recompense theory, by Constitutional mandate created courts of general jurisdiction and adopted as a part of their basic law that those very courts shall be open to every person who seeks a redress for every injury to his person, property or character.

Certainly appropriate procedure for the determination of the rights now owned by Petitioners is provided by Section 136, Chapter 176, Vol. 4, 1935 Colorado Statutes Annotated, that,

"Executors, administrators, guardians and conservators shall, in their own names and official capacities, by virtue of their office as such, be allowed to prosecute and defend on behalf of the wards or estates represented by them. - - - In all actions against - - - estates of deceased persons, service of process shall be made upon the executors, administrators; - - - as the case may be."

Hence, it is obvious that under this Statute, representatives of the deceased estate are expressly authorized and empowered to defend any and all actions against the estate, *if a cause of action survives the death of a person whose estate they represent.*

In brief resumé, then, the State of Colorado has expressly authorized and empowered the Respondent herein to defend the cause of action here sought to be enforced, and has further provided that process shall

be served upon her. Further, the State of Colorado has, by Constitutional provision, created courts of general jurisdiction and declared that these courts shall be open to every person to seek a remedy for injuries to his person, property or character, and Petitioners respectfully submit that it is clear under the foregoing Constitutional and Statutory Provisions, that a court exists in Colorado wherein this action, which survived under Nevada Law, may be heard and adjudicated, and that the survival statute of Colorado is in no way pertinent to this present litigation.

POINT "B"

The Cause of Action here sought to be maintained by the Petitioners is in no way repugnant to the public policy of the State of Colorado.

As stated by Mr. Justice White, speaking for the majority of the United States Supreme Court in the case of *N. P. R. R. Co. v. Babcock*, 154 U. S. 190, 38 L. Ed. 958, to justify a court in refusing to enforce a right of action which accrued under a Law of another State, because against the public policy of the State of the forum, it must appear that it is against the good morals or natural justice or that, for some other such reason, the enforcement of it will be prejudicial to the general interest of the State's own citizens.

The public policy of a given State must be determined by the Law of the State in which a cause of action is asserted, as made known by its Constitution, Statutes and Judicial Decisions. (*Girard Will Case*, 43 U. S. (2 How.) 127, 11 L. Ed. 205.)

It is obvious under the foregoing discussion contained under Point "A" hereof, that in no event does the Constitution of the State of Colorado in any way declare the public policy of the State of Colorado to be repugnant to the bringing of that cause of action here sought by the Petitioners. To the contrary, the Constitution of Colorado guarantees Petitioners their right

to seek redress for their injuries, be they to their person, property or character, and this without limitation as against whom the cause of action may be asserted.

While a State may deny a remedy in its Courts upon a tort arising in another jurisdiction (*Dougherty v. American McKenna Process Co.*, 255 Ill. 369, 99 N. E. 619), the fundamental public policy is that rights lawfully vested should be everywhere maintained and that only exceptional circumstances should cause one State to refuse to enforce a right acquired in another. *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 120 N. E. 198; and particularly so where such right is acquired by virtue of a "public act" of the State in which the cause of action accrued. (Constitution of the United States, Article 4, Section 1.)

Where the policy of a State has been positively expressed in a statute, as was done in the case of *Dougherty v. American McKenna Process Co.*, *supra*, that policy must prevail, but it is submitted that Section 247, Chapter 176, of the 1935 Colorado Statutes Annotated, in no way positively expresses or declares the public policy of Colorado to prohibit the prosecution of causes of action for injuries to the person against the estate or personal representative of the deceased tort feasor.

To the contrary, Section 15 of the Code of Civil Procedure, Chapter 1 of the Compiled Laws of Colorado of 1921, expressly provides:

"An action shall not abate by the death or other disability of a party, or by the transfer of any interest herein, *if the cause of action survive or continue*. In case of the death or other disability of a party, the Court on motion may allow the action be continued by, or against, his representative or successor in interest."

Further, Section 1, Chapter 176, Vol. 4, of the 1935 Colorado Statutes Annotated, provides in part:

"Whenever any person having title to any real estate or property having the nature or legal character of real estate or personal estate, undisposed of, or not otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to a kindred male and female, *subject to the payment of his debts, etc.*" ⁽¹⁾

Under the above Statutes, Petitioners submit that the public policy of Colorado militates against that interpretation placed thereon by the Honorable Circuit Court of Appeals.

In the cases of *Burg v. Knox*, 334 Mo. 329, 67 S. W. (2d) 96 (1933) and *Parsons v. American Trust & Banking Company*, 168 Tenn. 49, 73 S. W. (2d) 698 (1934), a cause of action which survived under the laws of a sister State and in which the injuries occurred, was sought to be enforced in the States of Missouri and Tennessee, neither of which provided, by statute or otherwise, for the survival of an action for personal injuries not resulting in death. However, in both of such States in which such causes of action were sought to be enforced, a *revival statute* had been enacted by the Legislature in substantially the following language:

"Causes of action upon which suit has been or may hereafter be brought by the injured party for personal injuries other than those resulting in death, shall not abate by reason of his death, or by reason of the death of the person against whom such cause of action shall have accrued."

In each of such cases the defense plead was that the "public policy" of the state of the forum was repugnant to the maintenance of such action because no *survival statutes* were contained in the laws of the States of the forum.

Clearly, in both of these cases—had the injury occurred within the jurisdiction of the State of the forum

and no action brought prior to the death of either party, no action could thereafter have been entertained by reason of the fact that the cause of action itself would not have survived, as is true in the State of Colorado. However, in each case a recovery was allowed and the Supreme Courts of each of the above States, in commenting upon this defense of "public policy" stated:

"No conflict raising the barriers of public policy can exist between statutes so nearly alike."

Is not the same reasoning applicable in the case at Bar? Had the cause of action presented by the case at Bar been instituted prior to the death of H. E. Blight, the cause of action surviving under the Laws of the State of Nevada, Respondent could have been brought in under the express provision of Section 15 of the Code of Civil Procedure.

How then, can it be said that the mere failure of the State of Colorado to expressly provide that such cause of action shall survive by Legislative Enactment, sets forth a public policy prohibiting the maintenance of an action for injuries to the person against the estate or personal representative of the deceased tort feasor in the State of Colorado - - - where such survived under the law of a sister State.

Certainly, Section 247 of Chapter 176 of the 1935 Colorado Statutes Annotated is not a *prohibitive* statute and does *not attempt* to go to the power of an executor, administrator or conservator to sue or be sued. In the cases of *Chubbuck v. Holloway*, 182 Minn. 255, 234 N. W. 314, 868, and *Kertson v. Johnson*, 185 Minn. 591, 242 N. W. 329, 85 A. L. R. 1, suit was brought in Minnesota for injuries to the person incurred in another jurisdiction, wherein the cause of action for such injuries to the person survived. However, it was contended that such causes might not be maintained because of Article 9656, G. S. Minn. 1923 (Art. 8174, G. S. Minn. 1913), which provided:

"A cause of action arising out of an injury to the person dies with the person of either party, except as provided in Art. 8175. All other causes of action, whether arising on contract or not, survive to the personal representative of the former and against those of the latter."

In overruling such contention, the Supreme Court of Minnesota states:

"Under the Wisconsin Statute, *Plaintiff has a vested right and the uniform interstate enforcement of vested rights is desirable. - - - The public policy of the forum cannot, with any regard for logic or general principles of justice, be violated by the enforcement of a vested right created by the law of a foreign state, or by the fact that the law which created it differs in respect to some debatable question of internal policy from the corresponding law of the forum. Especially is this so when there is, as here, nothing repugnant to good morals and no violation of fundamental principles of justice.* While the Wisconsin statute is different than our law, it is not so hostile to the policy reflected in our statutes and judicial records as to cause us to decline jurisdiction.

"Under our laws, a person's property passes to his heirs upon his death, but the property so passes to the heirs subject to decedent's debts. This means all debts. (*Chubbuck v. Holloway, supra*, and *Kertson v. Johnson, supra*.)"

Certainly, then, under the Statute Law of Colorado, which is in effect identical with that of the State of Minnesota—no such public policy is manifest as would be offended by the maintenance of the action here sought.

In the case of *Northern Pacific R. R. Co. v. Babcock, supra*, this Honorable Court held that even though the State of the forum expressly limits the amount of recovery for injuries resulting in death, nevertheless,

where the injuries giving rise to such cause of action were sustained under the law of a sister State giving a right of action for all such damages as under the circumstances were just, the law of the *lex loci* governed and the limitation contained in the law of the *lex fori* was inapplicable.

In conclusion, the most significant fact bearing upon the public policy of the State of Colorado is found in the many cases decided by the courts of that state themselves, wherein Section 247 of Chapter 176 of the 1935 Colorado Statutes Annotated is construed:

Kelley v. Union Pac. Ry. Co., 16 Colo. 455, 27 Pac. 1058 (1891).

Munal v. Brown, 70 Fed. 967 (C. C. Colo. 1895), a decision by Judge Hallett;

Letson v. Brown, 11 Colo. App. 11, 16; 52 Pac. 287 (1898).

Mumford v. Wright, 12 Colo. App. 214, 55 Pac. 744 (1898).

Lee v. City of Fort Morgan, 77 Colo. 135, 138; 235 Pac. 348 (1925).

Clapp v. Williams, 90 Colo. 13, 5 P. (2d) 872 (1931).

Micheletti v. Moidel, 94 Colo. 587, 591, 32 P. (2d) 266 (1934).

Stanley v. Petherbridge, 96 Colo. 293, 42 P. (2d) 609 (1935).

Although each of these cases adheres to the doctrine that an action for personal injuries may not be maintained against the estate or personal representative of the deceased tort feasor, where the cause of action or the injuries arose, or were inflicted within the jurisdiction of the State of Colorado, in not one of these Opinions is it even remotely indicated that such doctrine is founded on the question of public policy, hence it is submitted that there is no adequate basis for the Honorable Circuit Court of Appeals' conclusion that

to allow the maintenance of a cause of action for personal injuries against the estate, or personal representative of a deceased tort feasor would be obnoxious to the public policy of Colorado. *Bradford Electric Light Company v. Clapper, supra.*

The question involved in the Petition for Certiorari is important. Petitioners have been previously injured and are without other legal remedy than that presented by the case at Bar. Further, the precise question presented by this Petition is open and has never been decided by the State of Colorado, or by the Honorable Supreme Court of the United States.

It is important that when a litigation such as that presented by the case at Bar again arises, the party litigants may have some rule whereby they may govern their actions. Only this Court can resolve the confusion which exists with regard to the question of law presented by the case at Bar.

The Circuit Court of Appeals has denied to these Petitioners a valuable property right and it is earnestly submitted that they are entitled to a review of this Case by the Honorable Supreme Court of the United States.

Respectfully submitted,

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